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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,496

01/12/2006

John Van De Sype

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,496	Applicant(s) VAN DE SYPE, JOHN	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1-12-06</u> | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jirjis (6207209), Sen Gupta (4062882) and Jirjis (6833149) taken together.

Applicant admits at the top of page 3 of his specification that Jirjis (209) provides the desired lecithin of the claims. Jirjis (209) teaches separating lecithin from vegetable oil by membrane separation but does not stress lecithin recovery. But Jirjis (183) uses the same process and further discloses the recovery of lecithin from vegetable oils. At column 11, lines 40-57) lecithin retentate is described as containing 50-85% phospholipids and the balance being vegetable oils. The use of the lecithin product in foods is mentioned in the paragraph bridging columns 11 and 12. Treatment of lecithin with membrane separation is also described in Sen Gupta (882). The claims appear to differ from the combined references in

the recitation of the emulsion capacity and stability of the emulsion that is formed. It would have been obvious to one of ordinary skill in the art to expect the lecithin of Jurjis to have the emulsion stability and capacity of the claims because it lecithin made by the same process as the lecithin of the claims.

Claims 1-10, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al (5160759) in view of Jirjis (6207209), Sen Gupta (4062882) and Jirjis (6833149) taken together.

Nomura discloses edible oil in water emulsion of oil, water and lecithin at columns 14-15 with 30 parts oil, 70 part water and from .2-10% lecithin. In embodiment 5 aqueous phases of up to 80 % water are contemplated. In the abstract as low as 10% oil is contemplated. The claims appear to differ from Nomura in the recitation of a particular membrane separated lecithin with a particular ratio of alkali metals to alkaline earth metals. Applicant admits at the top of page 3 of his specification that Jirjis (209) provides the desired lecithin of the claims. Jirjis (209) teaches separating lecithin from vegetable oil by membrane separation but does not stress lecithin recovery. But Jurjis (183) uses the same process and further discloses the recovery of lecithin from vegetable

oils. At column 11, lines 40-57 lecithin retentate is described as containing 50-85% phospholipids and the balance being vegetable oils. The use of the lecithin product in foods is mentioned in the paragraph bridging columns 11 and 12. Treatment of lecithin with membrane separation is also described in Sen Gupta (882). It would have been obvious to one of ordinary skill in the art to use the lecithin of Jurjis in the dispersion of Nomura as an obvious a purified alternative or substitute source of lecithin. It is appreciated that the particular ratio of alkali metals to alkaline earth metals is not mentioned in the prior art but a prior art lecithin source is made by the same process as the claimed lecithin and would be expected to have the same components as claimed lecithin. It is appreciated that 85% water is not mentioned in the compositions of Nomura but one of ordinary skill in the art would expect water as an obvious calorie reducing ingredients for oil in the Nomura emulsion. It is appreciated that the emulsion capacity and stability of the emulsions it forms is not mentioned but it would have been obvious to one of ordinary skill in the art to expect the lecithin of Jurjis to have the emulsion stability and capacity of the claims because it lecithin made by the same process as the lecithin of the claims.

Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reddy (6322842) in view of Jirjis (6207209), Sen Gupta (4062882) and Jirjis (6833149) taken together.

Reddy discloses water in oil stick margarine. In example 1 the product is shown to have oil, lecithin and an aqueous phase. The claims appear to differ from Reddy in the recitation of a particular membrane separated lecithin with a particular ratio of alkali metals to alkaline earth metals. Applicant admits at the top of page 3 of his specification that Jirjis (209) provides the desired lecithin of the claims. Jirjis (209) teaches separating lecithin from vegetable oil by membrane separation but does not stress lecithin recovery. But Jirjis (183) uses the same process and further discloses the recovery of lecithin from vegetable oils. At column 11, lines 40-57 lecithin retentate is described as containing 50-85% phospholipids and the balance being vegetable oils. The use of the lecithin product in foods is mentioned in the paragraph bridging columns 11 and 12. Treatment of lecithin with membrane separation is also described in Sen Gupta (882). It would have been obvious to one of ordinary skill in the art to use the lecithin of Jirjis in the dispersion of Reddy as an obvious a purified alternative or substitute source of lecithin. It is appreciated that the

particular ratio of alkali metals to alkaline earth metals is not mentioned in the prior art but a prior art lecithin source is made by the same process as the claimed lecithin and would be expected to have the same components as claimed lecithin. It is appreciated that the emulsion capacity and stability of the emulsions it forms is not mentioned but it would have been obvious to one of ordinary skill in the art to expect the lecithin of Jurjis to have the emulsion stability and capacity of the claims because it lecithin made by the same process as the lecithin of the claims.

Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is unclear in the specification and claims as to the basis for the ratio of alkali ingredients is in the claims. The specification does not provide any guidance as to this basis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

Application/Control Number: 10/564,496
Art Unit: 1794

Page 8

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